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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,671	01/28/2004	Dorian Thurston True	42576/282562	3032
23370	7590	06/27/2007	EXAMINER	
JOHN S. PRATT, ESQ			HAWK, NOAH CHANDLER	
KILPATRICK STOCKTON, LLP			ART UNIT	PAPER NUMBER
1100 PEACHTREE STREET			3636	
ATLANTA, GA 30309			MAIL DATE DELIVERY MODE	
			06/27/2007 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/766,671	TRUE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Noah C. Hawk	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 14-16 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 and 11-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 January 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/27/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9 and 11-13, drawn to a canopy assembly, classified in class 135, subclass 88.05.
  - II. Claims 10 and 14-16, drawn to a method for erecting a canopy on a golf cart, classified in class 135, subclass 905.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the canopy could be used to cover the open space on any given vehicle needing protection from the elements.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Cate Hart on 5/31/07 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9 and 11-13.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 10 and 14-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Drawings***

5. The drawings are objected to because Figure 2, 5, 6, and 7 are black and white photographs that poorly depict the instant invention and its application, specifically the mounting to a golf cart frame. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

6. The disclosure is objected to because of the following informalities: The use of the trademark "Velcro" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-9 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preambles of Claims 1 and 11 recite the subcombination of an apparatus for covering a portion of a rear compartment of a golf cart, but language in the claim recites the combination of the apparatus and the golf cart. It is unclear whether the applicant is claiming the combination or the subcombination. For the purposes of examination, the claims will be treated as being directed to the combination of the apparatus and the golf cart.

***Claim Rejections - 35 USC § 102***

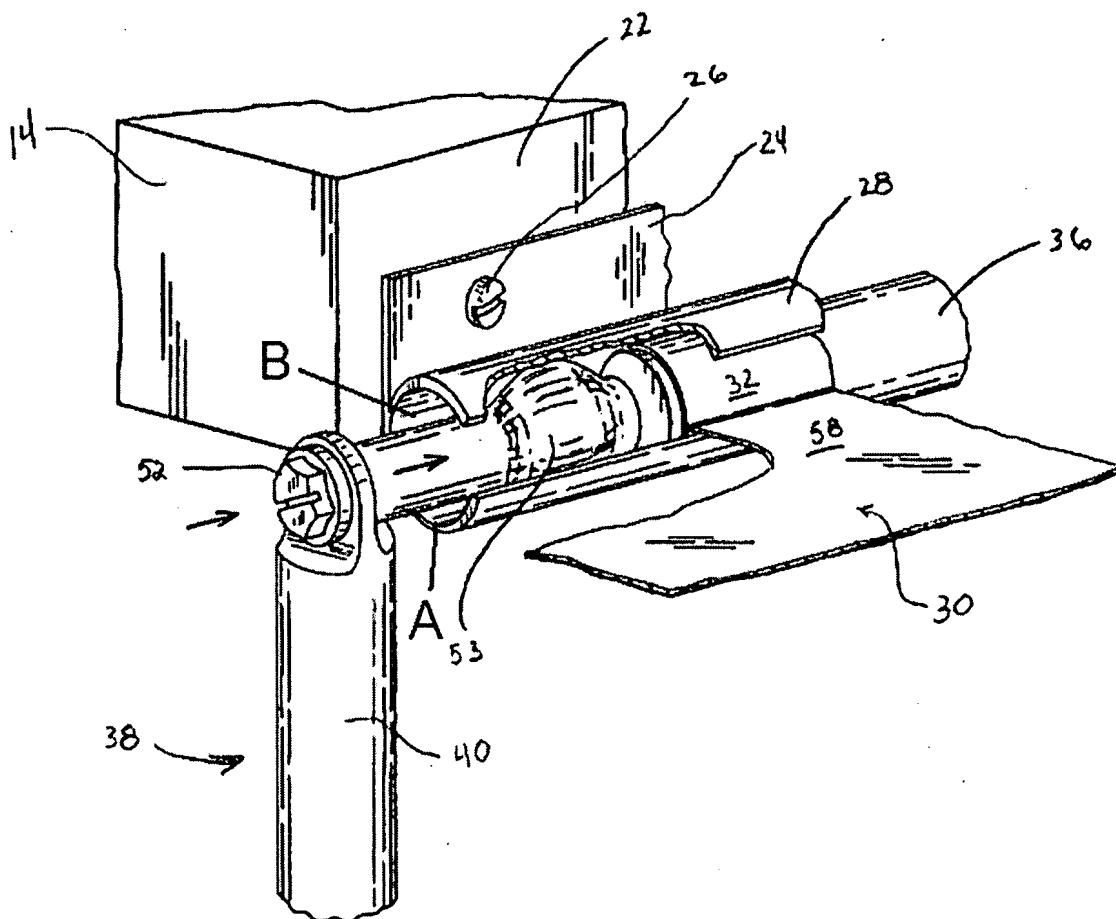
9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3-9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Peta in US Patent 6227217.

a. Regarding Claim 1, Peta teaches an apparatus for covering the rear of a golf cart, the apparatus comprising a stationary frame member (comprising at least 40, 42 and A), a movable frame member (56), and a cover (58), the stationary frame member mounted on the golf cart by brackets (24).



Peta, Figure 2

- b. Regarding Claim 3, Peta teaches that the stationary frame member comprises a U-shaped frame having a horizontal portion (A) and two legs (40, 42).
- c. Regarding Claim 4, Peta teaches that the horizontal portion (A) of the frame member is mounted to the brackets (24).

- d. Regarding Claim 5, Peta teaches that the movable frame member comprises a U-shaped frame with a horizontal portion (66) and two legs (70, 72).
- e. Regarding Claim 6, Peta teaches that at least one leg (70) of the movable member mounts to a respective leg (40) of the stationary frame member.
- f. Regarding Claim 7, Peta teaches a retainer bar strip (28) including a channel (B) and a retainer bar (36) wherein a portion of the cover (32) fits within the channel when the retainer bar is positioned within the channel.
- g. Regarding Claim 8, Peta teaches that the cover is sufficiently flexible ("pliable fabric cover 30" see Column 2, line 64) to extend from the retainer bar strip and over a portion of the rear compartment of the golf cart.
- h. Regarding Claim 9, Peta teaches a strap (76) configured to restrain the cover adjacent the stationary frame member.
- i. Regarding Claim 11, Peta teaches an apparatus for mounting to a golf cart, the apparatus comprising brackets (24) configured to be attached to the support frame and the roof (22), a stationary frame comprising a U-shape frame with a pair of arm tubes (40, 42), and a connecting tube (A) mounted to the rear support frame of the cart, a movable frame comprising a U-shape piece with two arm bars (70, 72), with at least one connected to the stationary frame (Best seen in Figure 3), and a connecting bar (66), the movable frame rotatable over a portion of the rear compartment of the golf cart, a cover retainer strip connected to the stationary frame comprising an elongate strip (28), a channel recess (B),

and a cover (58) connected to the retainer strip extending from the channel recess and over the movable frame (Best seen in Figure 1).

j. Regarding Claim 12, Peta teaches a cover retainer bar (36).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peta, as applied to Claim 1 above in view of Shugar et al in US Publication 2001/0039960. Peta is silent on the existence of handles on the roof of the golf cart to which his device is mounted. Shugar teaches a golf cart having handles (42, best seen in Figure 2) proximal the rear edge of the roof of a golf cart. It would have been obvious to one of ordinary skill in the art at the time of invention to use the device of Peta on a golf cart such as the one depicted in Shugar in order to, as Shugar teaches, protect a golf bag during times of inclement weather. A golf cart so modified would necessarily have the brackets mounted to the roof near the handles.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peta, as applied to Claim 1 above in view of Shugar et al in US Publication 2001/0039960. Peta teaches that the brackets mount to the golf cart at an upper portion of a rear support frame (18) but is silent on the existence of handles on the roof of the golf cart to which

his device is mounted. Shugar teaches a golf cart having handles (42, best seen in Figure 2) proximal the rear edge of the roof of a golf cart. It would have been obvious to one of ordinary skill in the art at the time of invention to use the device of Peta on a golf cart such as the one depicted in Shugar in order to, as Shugar teaches, protect a golf bag during times of inclement weather. A golf cart so modified would necessarily have the brackets mounted to the roof near the handles.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tyrer teaches a golf cart canopy apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/14/07



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SUPERVISORY PATENT EXAMINER